IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 711 OF 2006

Vishwanath Gamaji Meher and Ors. ... Petitioner

Versus

The Agricultural Produce Market Committee and anr. ... Respondents

Mr. M.M. Vashi and Mr. Shetty i/by M.P. Vashi & Associates for Petitioners.

Mr. R.J. Mane for R. No. 2.

Mr.N.N. Bhadrashetye for R. No. 1.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : 06TH JULY, 2006

P.C.:

. The Petitioner has approached this Court contending that it is not open to the respondent No. 1 to recover supervision charges and demand to pay licence fees etc. There is also challenge to the notification dated 9.2.2004. By that notification, the Government has included Banana in the schedule. We have heard the learned counsel for the Petitioners and Respondents. Reply has been filed in this case.

. Admittedly, Respondent No. 2 has issued notification declaring market area as contemplated by Section 4 read with section 2(i) of the Maharashtra Agricultural Produce Marketing

Regulation Act, 1963 (hereinafter referred to as "Act"). By the virtue of Section 6, once there is market area any person dealing in any commodity included in in the schedule has to obtain the licence. By virtue of Section 31, the Purchaser of agricultural produce market in the market area, has to pay fee as levied by the market committee. It is the case of the Petitioner that in the absence of market, it is not open to the Respondent No. 2 to either charge licence fees or market fees.

. In our opinion, the argument is misplaced. Section 2(a) defines the market to mean the principal market for the purpose of the Act as also subsidiary market. The expression market and market area have two different annotations. One refers to the larger area wherein activities are to be carried out and the other a specified area A Conjoint reading of section 6 and section 31 makes it clear that any person desirous of carrying out any activity in respect of the item included in schedule has to obtain licence. Without licence, it is not open to such purchaser to carry on the activities. Similarly, the purchaser has to pay the market fees as contemplated by section 31.

. On behalf of Respondent No. 1, the learned counsel points out that in so far as supervision

charges are concerned, the learned Division Bench of this Court has now taken a view under Section 34A of the Act that the supervision charges can only be recovered by the State Government, in respect of the supervisors appointed by the Government. For the moment, we are not deciding that controversy. As on today, it will not be open to the Respondent No. 2 to charge supervision charges. If the supervision charges are still insisted, it will be open to the Petitioner to take such steps in law to which he is entitled to. As long as the judgment of this court is in force and as long as the provisions of the Act remains the same, it will not be open to Respondent No. 1 to charge supervision charges.

. Apart from supervision charges, the Respondent No. 1 is not charging from the person like petitioners any other charges.

. The only other question is whether it is open for this court to strike down the notification which included Banana in the schedule. We find from the pleadings and record that banana was earlier included in the schedule. That appears to have been subsequently excluded by the government. It appears that some petitions were filed before Aurangabad Bench of this court and the notification of the Government was stayed. Thereafter once again, the

Government introduced banana in the schedule. There is power in the Government to include the fruit in the schedule and once there is power and as long as the product falls within the expression fruit, the challenge as made by the Petitioner is devoid of any merit.

. For the aforesaid reasons, we find no merit in the petition which is accordingly rejected.

(MRS.V.K.TAHILRAMANI,J.) **(F.I.REBELLO, J.)**